

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN RAY, BRIAN ESPOSITO, SAMUEL
LADD and JENNA MILLER, on behalf of themselves
and all others similarly situated,

Plaintiffs,

- v -

1650 BROADWAY ASSOCIATES INC. d/b/a
ELLEN'S STARDUST DINER, KEN STURM, and
ELLEN STURM, jointly and severally,

Defendants.

USDC SDNY
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No.16-CV-09858 (VSB)

~~PROPOSED~~ CASE
MANAGEMENT PLAN AND
SCHEDULING ORDER

VERNON S. BRODERICK, United States District Judge:

Pursuant to Rules 16-26(f) of the Federal Rules of Civil Procedure, the Court hereby adopts the following Case Management Plan and Scheduling Order:

1. All parties **DO NOT CONSENT** to conducting all further proceedings before a United States Magistrate Judge, including motions and trial, pursuant to 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences. All discovery disputes are referred to Magistrate-Judge Barbara Moses.
2. The parties **HAVE** engaged in settlement discussions.
3. This case **[IS/IS NOT]** to be tried to a jury.

The parties have been unable to reach an agreement as to whether this matter is to be tried by a jury. Plaintiffs have included a jury demand in their pleadings and defendants take the position that this matter should not be tried by a jury.

4. Except as provided by Rule 15 of the Federal Rules of Civil Procedure, or pursuant to the opt-in provisions of the Fair Labor Standards Act, no additional parties may be joined without leave of the Court.
5. Except as provided by Rule 15 of the Federal Rules of Civil Procedure, no additional causes of action or defenses may be asserted after without leave of the Court.
6. Initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure shall be completed no later than **July 28, 2017**.
7. All fact discovery is to be completed no later than **January 31, 2018**.
8. The parties are to conduct discovery in accordance with the Federal Rules of Civil

Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the parties on consent without application to the Court, provided that the parties meet the deadline for completing fact discovery set forth in ¶ 7 above.

- a. Initial requests for production of documents shall be served by **August 14, 2017**.
 - b. Interrogatories shall be served by **August 14, 2017**.
 - c. Depositions shall be completed by **December 30, 2017**.
 - i. Absent an agreement between the parties or an order from the Court, depositions are not to be held until all parties have responded to initial requests for document production.
 - ii. There is no priority for depositions by reason of a party's status as a plaintiff or a defendant.
 - iii. Absent an agreement between the parties or an order from the Court, non-party depositions shall follow initial party depositions.
 - iv. *Additional Issues: Defendants intend to depose between 10%-20% of the opt-in plaintiffs. Plaintiffs have taken the position that defendants should be limited to taking the depositions of the named plaintiffs in view of the fact that the matter has been filed as a representative action. The parties will submit separate letters to the Court outlining their positions on this matter.*
 - d. Requests for admissions shall be served no later than **January 12, 2018**.
9. All expert discovery, including disclosures, reports, production of underlying documents, and depositions shall be completed as follows: The parties shall exchange expert reports, if any, by **February 28, 2018** and experts shall be deposed by **March 31, 2018**.
 10. All discovery shall be completed no later than **March 31, 2018**.
 11. The Court will conduct a post-discovery conference on April 20, 2018 at 10:00 a.m.. **[To be completed by the Court.]** No later than two weeks in advance of the conference, the parties are to submit a joint letter updating the Court on the status of the case, including but not limited to whether either party intends to file a dispositive motion and what efforts the parties have made to settle the action.
 - a. If either party contemplates filing a dispositive motion, the post-discovery conference will function as a pre-motion conference required by Rule 4.A of the Court's Individual Rules and Practices. If neither party contemplates a dispositive motion, the post-discovery conference will function as a pretrial conference at which a trial date will be set; in anticipation of the pretrial conference, the parties shall file a joint status update letter of no more than three pages. The parties shall

file the pre-motion letters or the joint status update letter by
April 9, 2018. **[To be completed by the Court.]**

Unless otherwise ordered by the Court, the joint pretrial order and additional submissions required by Rule 6 of the Court's Individual Rules and Practices shall be due 30 days from the close of discovery, or if any dispositive motion is filed, 30 days from the Court's decision on such motion. This case shall be trial ready 60 days from the close of discovery or from the Court's decision on any dispositive motion.

12. Counsel for the parties propose the following alternative dispute resolution mechanism for this case:
- a. X Referral to a Magistrate Judge for settlement discussions.
 - b. Referral to the Southern District's Mediation Program. *[Note that all employment discrimination cases, except cases brought under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., are designated for automatic referral to the Court's Alternative Dispute Resolution program of mediation. Accordingly, counsel in such cases should select 13(b).]*
 - c. X Retention of a private mediator.

The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.

13. The parties have conferred and their present best estimate of the length of trial is 10 Days

SO ORDERED.

July 17, 2017.

Dated: New York, New York



Vernon S. Broderick
United States District Judge